

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN SENATE MAY 25, 2006

AMENDED IN SENATE MAY 9, 2006

SENATE BILL

No. 1208

Introduced by Senator Ortiz

(Principal coauthors: Assembly Members Jerome Horton and Koretz)

(Coauthors: Assembly Members Jones and Lieber)

January 26, 2006

An act to add Section 22964 to, and to repeal and add Section 22963 of, the Business and Professions Code, to amend Section 308.1 of the Penal Code, and to repeal Section 30101.7 of the Revenue and Taxation Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

SB 1208, as amended, Ortiz. Tobacco products.

(1) Existing law, the Cigarette and Tobacco Products Tax Law, requires every distributor of cigarettes to pay taxes, as prescribed, on the distribution of cigarettes. In addition to the requirement to pay taxes on the distribution of cigarettes, existing law also requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. Existing federal law, known as the Jenkins Act, requires any person that sells or transfers, in interstate commerce, cigarettes into a state that taxes the sale or use of cigarettes to file and report specified information with the tobacco tax administrator of that state.

Existing law prohibits, except under specified circumstances, a retail sale of cigarettes that is not a face-to-face sale, as defined, and prohibits distribution of tobacco products through the mail. Existing

law exempts a person from the face-to-face sale restriction, if that person has paid all applicable state taxes and is in compliance with the federal Jenkins Act.

This bill would *enact substantially similar provisions relating to cigars and pipe tobacco. The bill would, for cigarettes and other tobacco products, as defined, exclude cigar and pipe tobacco*, repeal the face-to-face sale requirement, and the related tax reporting provisions ~~except for cigars and pipe tobacco, the bill~~, would repeal the prohibitions against distribution through the mail, and would, instead, with certain exceptions, prohibit shipping or transporting *of cigarettes or tobacco products* to persons in California, and would establish criminal and civil penalties for violation of this prohibition.

(2) Existing law prohibits the offer, sale, distribution, or importation of a tobacco product know as “bidis” or “beedies,” as defined, unless it is sold or intended for sale in business establishments that exclude minors.

This bill would amend the definition of “bidis” or “beedies” to include any product that is marketed and sold as “bidis” or “beedies” and would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

(3) By changing the definition of related crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 shipment of cigarettes and tobacco products sold via the Internet
3 or by telephone or by mail order to residents of this state poses a
4 serious threat to public health, safety, and welfare, and to the
5 economy of the state. The Legislature also finds that when
6 cigarettes and tobacco products are shipped directly to a
7 consumer, adequate proof that the purchaser is of legal age

1 cannot be obtained by the vendor, thereby enabling sellers of
2 cigarettes or tobacco products to evade provisions of law
3 designed to prevent sales to minors. It is also the Legislature's
4 finding that by preventing shipment of cigarettes or tobacco
5 products directly to consumers, the state will be better able to
6 measure and monitor cigarette consumption and to better
7 determine the public health and fiscal consequences of smoking
8 and using tobacco products. The Legislature further finds that
9 existing penalties for cigarette bootlegging are an inadequate
10 deterrent.

11 SEC. 2. Section 22963 of the Business and Professions Code
12 is repealed.

13 SEC. 3. Section 22963 is added to the Business and
14 Professions Code, to read:

15 22963. (a) It is unlawful for any person engaged in the
16 business of selling or distributing cigarettes or tobacco products
17 to ship or cause to be shipped any cigarettes or tobacco products
18 to any person in this state who is not any of the following:

19 (1) Licensed pursuant to Division 8.6 (commencing with
20 Section 22970).

21 (2) An export warehouse proprietor pursuant to Chapter 52 of
22 the Internal Revenue Code (26 U.S.C. Sec. 5701 et seq.).

23 (3) An operator of a customs bonded warehouse pursuant to
24 Section 1311 or 1555 of Title 19 of the United States Code.

25 (4) A person who is an officer, employee, or agent of the
26 federal government, or of this state or of a department, agency,
27 instrumentality, or political subdivision of the federal
28 government or this state, when the person is acting in accordance
29 with his or her official duties.

30 (b) It is unlawful for any common or contract carrier to
31 knowingly transport cigarettes or tobacco products to any person
32 in this state reasonably believed by the carrier to be other than a
33 person described in subdivision (a). ~~For the purposes of this~~
34 ~~subdivision, if cigarettes or tobacco products are transported to a~~
35 ~~home or residence, it shall be presumed that the common or~~
36 ~~contract carrier knew that the person was not a person described~~
37 ~~in subdivision (a).~~ It is unlawful for any other person to
38 knowingly, or with reason to know, transport cigarettes or
39 tobacco products to any person in this state, other than a person
40 described in subdivision (a).

1 (c) When a person engaged in the business of selling or
2 distributing cigarettes or tobacco products ships or causes to be
3 shipped any cigarettes or tobacco products to any person in this
4 state, other than in the cigarette or tobacco product
5 manufacturer's original container or wrapping, the container or
6 wrapping shall be plainly or visibly marked with the term
7 "cigarettes" or "tobacco products."

8 (d) Notwithstanding any other provision of this division, upon
9 discovery by the State Board of Equalization or a law
10 enforcement agency of any cigarettes or tobacco products that
11 have been, or are being, shipped or transported in violation of
12 this section, the board or the law enforcement agency may seize
13 and take possession of the cigarettes or tobacco products. Any
14 cigarettes or tobacco products seized by a law enforcement
15 agency shall be delivered to the board, or its designee, within
16 seven days, unless the cigarettes or tobacco products will be
17 destroyed by that law enforcement agency, or unless the
18 cigarettes or tobacco products are otherwise required to be used
19 as evidence in an administrative, criminal, or civil proceeding, or
20 as part of an ongoing law enforcement operation. Any cigarettes
21 or tobacco products seized by the board or delivered to the board
22 by a law enforcement agency shall be deemed forfeited and the
23 board shall comply with procedures set forth in Chapter 7.5
24 (commencing with Section 30435) of Part 13 of Division 2 of the
25 Revenue and Taxation Code.

26 ~~(e) (1) A violation of this section is a misdemeanor and shall~~
27 ~~be punishable by a fine of not less than five thousand dollars~~
28 ~~(\$5,000) but not more than fifty thousand dollars (\$50,000), or by~~
29 ~~imprisonment not to exceed one year in a county jail, or both the~~
30 ~~fine and imprisonment.~~

31 *(e) (1) A violation of this section is a misdemeanor and shall*
32 *be subject to the following penalties:*

33 *(A) Upon the first violation, a fine of not more than one*
34 *thousand dollars (\$1,000).*

35 *(B) Upon the second violation, a fine of not more than five*
36 *thousand dollars (\$5,000) and imprisonment not to exceed three*
37 *months.*

38 *(C) Upon the third violation or subsequent violations, a fine of*
39 *not more than twenty-five thousand dollars (\$25,000) and*
40 *imprisonment not to exceed six months.*

(2) In addition to the criminal penalty, the Attorney General, district attorney, or city attorney may bring a civil action against any person, firm, corporation, or other entity that violates this section. If a court determines that this section has been violated, the court shall assess civil penalties not to exceed five thousand dollars (\$5,000) per violation, plus the costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and court costs.

(f) For the purposes of this section, the following definitions shall apply:

(1) "Cigarette" has the same meaning as in paragraph (3) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code and implementing regulations.

(2) "Tobacco products" includes, but is not limited to, any form of smoking tobacco, smokeless tobacco, chewing tobacco, snuff, and any other article or product containing tobacco, but "tobacco products" does not include cigarettes, as defined in paragraph (1), cigars, or pipe tobacco.

~~(f)~~

(g) For the purposes of this section, "tobacco products" shall not include cigars or pipe tobacco.

SEC. 3.5. Section 22964 is added to the Business and Professions Code, to read:

22964. (a) The distribution or sale of cigars or pipe tobacco directly or indirectly to any person under the age of 18 years through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing cigars or pipe tobacco directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions:

(1) (A) Before enrolling a person as a customer or distributing or selling the cigar or pipe tobacco through any of these means, the distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has

1 been verified to be 18 years or older by reference to an
2 appropriate database of government records kept by the
3 distributor, a direct marketing firm, or any other entity. The
4 distributor or seller shall also verify that the billing address on
5 the check or credit card offered for payment by the purchaser
6 matches the address listed in the database.

7 (B) If the distributor or seller is unable to verify that the
8 purchaser is 18 years of age or older pursuant to subparagraph
9 (A), he or she shall require the customer to submit an
10 age-verification kit consisting of an attestation signed by the
11 customer that he or she is 18 years of age or older and a copy of
12 a valid form of government identification includes a driver's
13 license, state identification card, passport, an official
14 naturalization or immigration document, such as an alien
15 registration receipt card (commonly known as a "green card") or
16 an immigrant visa, or military identification. The distributor or
17 seller shall also verify that the billing address on the check or
18 credit card provided by the consumer matches the address listed
19 in the form of government identification.

20 (2) The distributor or seller shall require payment for the
21 purchase of any cigar or pipe tobacco to be made by personal
22 check of the purchaser or the purchaser's credit card. No money
23 order or cash payment shall be received or permitted. The
24 distributor or seller shall submit to each credit card acquiring
25 company with which it has credit card sales identification
26 information in an appropriate form and format so that the words
27 "tobacco product" may be printed in the purchaser's credit card
28 statement when a purchase of a cigar or pipe tobacco is made by
29 credit card payment.

30 (3) The distributor or seller shall make a telephone call after 5
31 p.m. to the purchaser confirming the order prior to shipping the
32 cigars or pipe tobacco. The telephone call may be a
33 person-to-person call or a recorded message. The distributor or
34 seller is not required to speak directly with a person and may
35 leave a message on an answering machine or by voice mail.

36 (4) The distributor or seller shall deliver the cigar or pipe
37 tobacco to the purchaser's verified billing address on the check
38 or credit card used for payment. No delivery described under this
39 section shall be permitted to any post office box.

1 (c) Notwithstanding subdivisions (a) and (b), if a distributor or
2 seller complies with all of the requirements of this section and a
3 minor obtains a cigar or pipe tobacco by any of the means
4 described in subdivision (b), the seller or distributor is not in
5 violation of this section.

6 (d) For the purposes of the enforcement of this section
7 pursuant to Section 22958, the acts of the United States Postal
8 Service or other common carrier when engaged in the business of
9 transporting and delivering packages for others, and the acts of a
10 person, whether compensated or not, who transports or delivers a
11 package for another person without any reason to know of the
12 package's contents, are not unlawful and are not subject to civil
13 penalties.

14 (e) (1) For the purposes of this section, a "distributor" is any
15 person or entity, within or outside the state, who agrees to
16 distribute cigars or pipe tobacco to a customer within the state.
17 The United States Postal Service or any other public or private
18 postal or package delivery service are not distributors within the
19 meaning of this section.

20 (2) For the purpose of this section, a "seller" is any person or
21 entity, within or outside the state, who agrees to sell cigars or
22 pipe tobacco to a customer within the state. The United States
23 Postal Service or any other public or private postal or package
24 delivery service are not sellers within the meaning of this section.

25 (f) A district attorney, city attorney, or the Attorney General
26 may assess civil penalties against any person, firm, corporation,
27 or other entity that violates this section, according to the
28 following schedule:

29 (1) A civil penalty of not less than one thousand dollars
30 (\$1,000) and not more than two thousand dollars (\$2,000) for the
31 first violation.

32 (2) A civil penalty of not less than two thousand five hundred
33 dollars (\$2,500) and not more than three thousand five hundred
34 dollars (\$3,500) for the second violation.

35 (3) A civil penalty of not less than four thousand dollars
36 (\$4,000) and not more than five thousand dollars (\$5,000) for the
37 third violation within a five-year period.

38 (4) A civil penalty of not less than five thousand five hundred
39 dollars (\$5,500) and not more than six thousand five hundred
40 dollars (\$6,500) for the fourth violation within a five-year period.

1 (5) A civil penalty of ten thousand dollars (\$10,000) for a fifth
2 or subsequent violation within a five-year period.

3 SEC. 4. Section 308.1 of the Penal Code is amended to read:

4 308.1. (a) Notwithstanding any other provision of law, no
5 person shall sell, offer for sale, distribute, or import any tobacco
6 product commonly referred to as “bidis” or “beedies,” unless that
7 tobacco product is sold, offered for sale, or intended to be sold in
8 a business establishment that prohibits the presence of persons
9 under 18 years of age on its premises.

10 (b) For purposes of this section, “bidis” or “beedies” means
11 any of the following:

12 (1) A product containing tobacco that is wrapped in temburni
13 leaf (*diospyros melanoxylon*) or tendu leaf (*diospyros exculpra*).

14 (2) A product that is marketed and sold as “bidis” or
15 “beedies.”

16 (c) Any person who violates this section is guilty of a
17 misdemeanor and is also subject to a civil action brought by the
18 Attorney General, a city attorney, county counsel, or district
19 attorney for an injunction and a civil penalty of up to two
20 thousand dollars (\$2,000) per violation. This subdivision does
21 not affect any other remedies available for a violation of this
22 section.

23 SEC. 5. Section 30101.7 of the Revenue and Taxation Code
24 is repealed.

25 SEC. 6. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the
30 penalty for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition of a
32 crime within the meaning of Section 6 of Article XIII B of the
33 California Constitution.